

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JFS FT LLC,

Plaintiff,

vs.

KYOSAY GLOBAL, LLC, an Illinois Limited Liability Company, KYOSAY GLOBAL, an Illinois Partnership, STEVE BORRE, FRANK LAZOWSKI, CAMERON REID, ENTELLI CONSULTING LLC, an Illinois Limited Liability Company, and DOES 1 THROUGH 20,

Defendants.

KYOSAY GLOBAL, LLC, an Illinois Limited Liability Company,

Defendant/Counter-Plaintiff,

vs.

JFS FT LLC,

Plaintiff/Counter-Defendant.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JOHN FINN, being duly sworn, deposes and says:

1. I am the CEO of Plaintiff JFS FT LLC (“JFS”) in this action. I am personally familiar with the matters set forth herein and make this affidavit in opposition to Defendants, Kyosay Global, LLC’s, Cameron Reid’s, Steve Borre’s, and Frank Lazowski’s (collectively “Reid/Kyosay”) motion to dismiss.

2. I am an accountant, not a software expert, by training and education. My business relies on advanced custom software to provide specialized accounting services to the film and television industry.

Case No. 11 Civ 0972 (BSJ)

**AFFIDAVIT OF JOHN FINN IN
OPPOSITION TO KYOSAY
GLOBAL LLC’S, CAMERON
REID’S, STEVE BORRE’S, AND
FRANK LAZOWSKI’S MOTION
TO DISMISS**

3. Through 2009, my company had been working with what I perceived to be sub-par software for our needs and we were interested in purchasing a custom software application to improve business.

4. It was in this context that in or about May 2009, I first met Reid, who, on information and belief, is an employee of Kyosay Global LLC, and discussed my software needs with him.

5. I was introduced to Reid by a security consultant employed by a sister company to JFS of which I am also the CEO and which shares the same offices.

6. At that time, we first paid Mr. Reid roughly \$5000 for expert computer source code de-compilation services and \$9000 for additional software support in regard to then existing accounting software.

7. Thereafter, for a period of several weeks, Reid/Kyosay worked closely with myself and other employees, gained my trust, and came to know both my software requirements and me well.

8. Because of the relationship that I had formed with Reid -- and his purported expertise in the field of software design and production -- on request, he conducted a software assessment.

9. He conducted this assessment and advised me accordingly, and I considered him to be giving me objective advice.

10. Because we formed a relationship and I considered Reid to be a trusted advisor, and because of his claimed technical expertise in the field of software design and development, based on his assessments and his claims that Reid/Kyosay had the required expertise perform, I agreed to hire Reid/Kyosay to develop, design and produce a custom software application.

11. Given the crucial nature of software to my business, I was only interested in working with a very experienced software developer. I made this clear to Mr. Reid. This was precisely what he claimed himself and Kyosay to be.

12. In addition, Reid made false statements of fact to me and others that JFS relied on in deciding to enter into an agreement with Kyosay to produce software.

13. The following is a list of his false statements:

14. In May 2009, Reid stated at the JFS offices in New York City to me and other of my employees, including Yara Maalanine, in sum and substance, that he and Kyosay have built accounting and payroll software systems in the past and could do so for JFS.

15. In May 2009, Reid stated at the JFS offices in New York City to me other of my employees, including Yara Maalanine, in sum and substance, that he has built many payroll and accounting software systems for large companies who do accounting.

16. In May 2009, Reid stated at the JFS offices in New York City to me and other of my employees, including Yara Maalanine, in sum and substance, that he had the skills and expertise needed to perform the work required in delivering the required payroll and accounting software because he had worked at a public accounting firm before.

17. Had I known at the time these statements were false, JFS would not have hired Kyosay. I relied on his advice and opted for the new software application and trusted in his representations that he and his company were able to deliver such an application.

18. Moreover, in addition to falsely representing his and Kyosay's capacities, I believe Reid/Kyosay intentionally misguided me as to the work that was needed to suit JFS' software needs.

19. During a later assessment, Reid/Kyosay recommended against a minor and inexpensive patch for my existing general ledger software and recommended instead that we design a new general ledger software application from which would increase the cost of the entire package to a cost that what he told me would be approximately \$600,000.00.

20. JFS relied on his advice and opted for the new software application and trusted in his representations that he and his company were able to deliver such an application.

21. By the middle of 2009, based on the representations and advice of Reid/Kyosay, JFS had reached an oral agreement with Reid/Kyosay to design a custom payroll processing software application. Later in August 2009, we orally agreed to expand the scope of project to include the general ledger accounting application.

22. There was no executed written contract, though Reid/Kyosay produced numerous drafts indicating their promises to produce the software but that were for various reasons unacceptable. When prompted for revisions, Reid/Kyosay either stalled or produced such wildly differing, confusing and unacceptable iterations that in each instance I asked that they produce further iterations to correct unacceptable terms.

23. The two software applications essentially form two modules of one large software design project where Reid/Kyosay were to produce from scratch program source code, system documentation, and host of other deliverables to JFS to form a complete custom payroll processing and general ledger accounting software application.

24. Shortly after Reid/Kyosay began work, Reid informed me that he wished to hire other developers who turned out to be defendant, Entelli Consulting LLC to ("Entelli"), assist in their development of the software.

25. My understanding based on statements made by Reid/Kyosay was that Reid/Kyosay's responsibility would include overseeing Entelli—managing and

instructing it to code and develop the software Reid/Kyosay was designing and developing according to our needs—and Reid/Kyosay were responsible for all aspects of producing the deliverables, including design and development of the functioning software application.

26. It was my understanding thereafter based on statements made by Reid/Kyosay and the agreement with Entelli that Entelli along with Reid/Kyosay were to produce the functioning software for JFS and that such would be complete by March 31, 2010.

27. From June 1, 2009 through September 30, 2010, JFS has paid Kyosay and Entelli just under \$900,000.00.

28. At the end of that time, and over 6 months behind schedule, neither defendant had produced any usable code or any operational software.

29. All defendants were completely ineffectual in producing the proposed software and I have since learned that all defendants intentionally and at every juncture hid the fact that they were utterly in over their heads in attempting to produce software that was far outside their ability to produce. I believe Reid took wrong and unfair advantage of his expertise and the position of trust I placed him in.

30. In September 2010, JFS ceased paying Reid/Kyosay and was forced to find a new software developer to create the software JFS had paid Kyosay and Entelli nearly \$900,000.00 to create. The new firm has had to start essentially from

scratch and was unable to use any significant amount of the code, documentation, or any other materials produced by defendants.

31. One employee of Entelli remained so that he could assist the new developer to facilitate the transfer of the project.

32. Shortly after Reid/Kyosay's termination, Kyosay's managing partner, Frank Lazowski, contacted me. During that phone call he admitted to me that the operating procedures Reid/Kyosay had implemented for this project were not up to the normal industry standards nor Kyosay's standards and that he was shocked to find that no adequate quality assurance measures among other normal operating procedures had been implemented by his company. He seemed surprised at what occurred about what had been going on under Reid/Kyosay and with Entelli for the past year.

33. Nevertheless, when I told him I would like a refund for these errors and for the fact that no usable software was produced, he refused.

THE KYOSAY GLOBAL WEBSITE

34. Attached as **Exhibit 1** hereto are pages from the Kyosay Global website located at <http://www.kyosayglobal.com> as of April 27, 2011. Such pages include the front page, the management pages detailing Frank Lazowski and Steve Borre as managing partners, and the address pages.

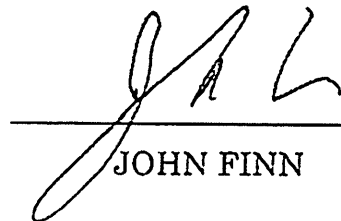
35. Nowhere on such pages or in my review of the website did it indicate that Kyosay Global is an LLC or otherwise. It does however appear to be a partnership given that the management executives are described as partners.

36. I note that as of today's date the website has been modified to add LLC after the terms Kyosay Global. However the principals are still identified as partners.

37. I ask the court to note the fact that after misrepresenting Cameron Reid's and Kyosay's pre-existing expertise in providing the product JFS sought in 2009 and then completely failing to deliver after causing the waste of nearly \$900,000.00, in January of 2011, well after their termination, Kyosay released a "Press Release" attached hereto as **Exhibit 2** that includes the boasting of Cameron Reid stating: "Building from two years of custom application development work ... Kyosay... is announcing the development of a formal software and application development practice," and "[o]ver the past two years, we have fully developed our ability to design and build end-to-end software solutions for our clients."

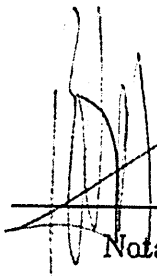
38. Based on the press release dated January 4, 2011 announcing their new software development practice, it appears certain that not only were Kyosay/Reid's representations of experience in 2009 false, but that they are now bolstering their current service offerings after literally practicing on JFS but with disastrous results.

WHEREFORE, I respectfully request that this Court deny both motions to dismiss.



JOHN FINN

Subscribed and sworn to before me
this 28th day of June, 2011
by John Finn, known to me.



Notary Public

Ravi Ivan Sharma
Notary Public - State of New York
Qualified in New York County
02SH6221466 - COMM. Exp. 5/3/2014

EXHIBIT 1

KYOSAY GLOBAL

Kyosay ... living and working together for the common good.

Kyosay Global is a U.S.-managed firm specializing in operational improvements and increased supply chain value for our clients in North America, Europe and Asia. With operations in the U.S., Europe and Asia, we work with companies to drive speed to market, enhanced product quality/innovation and savings. Our capabilities give clients the tools they need to thrive in today's global economy.

LEARN MORE ABOUT THE FIRM | →



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Repeatedly sought out to lead new initiatives, Steve Borre has built a proven track record of successful, rapid business transformation. . . . [More](#)

▶ **Frank Lazowski, Managing Partner**
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With over two decades of experience in multinational supply chain, operations, manufacturing and engineering across multiple industries, . . . [More](#)

▶ **Tony Chak, Managing Director, Shunde**
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As one of the founders of an international product marketing and licensing business, Tony Chak has . . . [More](#)

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Drawing on more than 20 years of in-country experience in Asia, Europe and Latin America, Jon Anderson . . . [More](#)

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MANAGEMENT

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▶ Steve Borre, Managing Partner

sborre@kyosayglobal.com

Mobile: 847.883.7774

Repeatedly sought out to lead new initiatives, Steve Borre has built a proven management track record of successful, rapid business transformation. Drawing upon in-depth experience in P&L management, multisite operations, supply chain optimization, product management and sales/marketing, Steve has been effective in driving positive change in startup, rapid-growth and turnaround environments.

As a founding partner of Kyosay Global, Steve has been instrumental in establishing and directing manufacturing operations in emerging markets for key clients as well as developing and executing global supply chain strategies, new market entry plans and product development initiatives.

For over two decades, Steve progressed through a variety of positions within engineering, supply chain, product development, operations, sales and national accounts for W.W. Grainger. Working with major client companies including GE, Emerson, UTC and GM, he grew national accounts from \$11 million to over \$500 million. Leveraging his ability to drive successful change, he led the integration of two separate businesses into Grainger. This integration resulted in significant growth of key products. As Director of Quotations and Technical Support, Steve utilized his background in product management to create a centralized quotation department. This improved responsiveness to national

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▶ Frank Lazowski, Managing Partner

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 Mobile: 708.557.5219

With over two decades of experience in multinational supply chain, operations, manufacturing and engineering leadership across multiple industries, Frank Lazowski has designed and executed effective operations management, global sourcing, logistics, product development, market launch and process reengineering roadmaps for diverse organizations. A founding partner of Kyosay Global, Frank serves as a management advisor to senior executive teams and private equity firms with a focus on creating world-class supply chain networks and ensuring operational excellence. Clients span startup industrial manufacturers to global distributors and Fortune 500 industry leaders.

Previously, Frank served as Vice President and National Practice Leader of the Supply Chain Management Team for The Revere Group where he developed and implemented procurement, manufacturing and logistics solutions for diverse clients. As Senior Manager for Accenture, he was key in establishing valuable relationships and driving bottom-line value for Fortune 50 clients. He also served as Head of Product Development and International Sourcing for a GE company and Director of Manufacturing and Operations for Cummins-Allison Corporation.

Frank began his career with Deloitte Consulting as a Senior Consultant. His career highlights include enabling a major chemical company to acquire

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http://kyosayglobal.com/management_Frank_Lazowski.html[4/27/11 11:53:03 AM]



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The purpose of this Web site is to provide general information about the firm of Kyosay Global. It is not intended to advertise services or solicit clients.

We welcome your queries. For additional information, you can reach us at:

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EXHIBIT 2

Kyosay Global Expands Capabilities: Software & Application Capabilities

Expanded Expertise Gives Clients Turnkey Product Design and Engineering Solution

Northbrook, IL – January 4, 2011 – Building from two years of custom application development work for various clients, Kyosay Global, a U.S.-managed firm specializing in operational improvements and increased supply chain value, is announcing the development of a formal software and application development practice within their business.

“Over the past two years, we have fully developed our ability to design and build end-to-end software solutions for our clients,” explained Kyosay Director Cameron Reid. “We accomplish this with a flexible delivery model that is capable of leveraging offshore, nearshore and onshore resources as appropriate for each client's unique requirements.”

Specifically, Kyosay has formalized teams able to write and update code that works with standard real-time or embedded systems as well as database layer, application layer and user interface custom software development.

Kyosay utilizes a holistic approach to application lifecycle management, capturing the traditional plan, define, design, develop, configure, test and deliver stages of software development and implementation. In conjunction with the traditional stages of application lifecycle management, Kyosay employs a rigorous change management approach to ensure that proper adoption of the new or modified technologies occurs.

Additionally, as part of this new offering, Kyosay includes electronic and mechanical engineering capabilities, enterprise project and portfolio management, and enterprise requirements definition and management as part of the lifecycle quality management associated with their custom and packaged technology solutions.

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